but not including off-duty periods which are provided pursuant to the employment agreement).'' The ''hourly rate prescribed by'' paragraph (1) of the subsection is the minimum wage rate applicable according to the schedule shown in § 783.23.

§ 783.27 Scope of the provisions regarding "seamen".

In accordance with the above provisions of the Act as amended, an employee employed as a seaman is exempt only from its overtime pay provisions under the new section 13(b)(6), unless the vessel on which he is employed is not an American vessel. Section 13(a)(14) as amended continues the prior exemption, from minimum wages as well as overtime pay, for any employees employed as a seaman on a vessel other than an American vessel. Thus, to come within this latter exemption an employee now must be ''employed as'' a ''seaman'' on a vessel other than an ''American vessel'', while to come within the overtime exemption provided by section 13(b)(6) an employee need only be ''employed as'' a ''seaman''. The minimum wage requirements of the Act, as provided in section 6(b) and paragraph (2) of that subsection apply if the employee is ''employed as'' a ''seaman'' on an ''American vessel''. The meaning and scope of these key words, ''employed as a seaman'' and ''American vessel'' are discussed in subsequent sections of this part. Of course, if an employee is not ''employed as'' a ''seaman'' within the meaning of this term as used in the Act, these exemptions and section 6(b)(2) would have no relevancy and his status under the Act would depend, as in the case of any other employee, upon the other facts of his employment, (§§ 783.18 through 783.20).

LEGISLATIVE HISTORY AND JUDICIAL CONSTRUCTION OF THE EXEMPTIONS

§ 783.28 General legislative history.

As originally enacted in 1938, section 13(a)(3) of the Fair Labor Standards Act exempted from both the minimum wage and overtime pay requirements ''any employee employed as a seaman'' (52 Stat. 1050). In 1949 when several amendments were made to the Act (63

Stat. 910), this exemption was not changed except that it was renumbered section 13(a)(14). In the 1961 amendments (75 Stat. 65), a like exemption was retained but it was limited to one employed as a seaman on a vessel other than an American vessel (section 13(a)(14)); an overtime exemption was provided for all employees employed as seamen (section 13(b)(6)), and those employed as seamen on an American vessel were brought within the minimum wage provisions (sec. 6(b)(2)).

§ 783.29 Adoption of the exemption in the original 1938 Act.

(a) The general pattern of the legislative history of the Act shows that Congress intended to exempt, as employees ''employed as'' seamen, only workers performing water transportation services. The original bill considered by the congressional committees contained no exemption for seamen or other transportation workers. At the joint hearings before the Senate and House Committees on Labor, representatives of the principal labor organizations representing seamen and other transportation workers testified orally and by writing that the peculiar needs of their industry and the fact that they were already under special governmental regulation made it unwise to bring them within the scope of the proposed legislation (see Joint Hearings before Senate Committee on Education and Labor and House Committee on Labor on S. 2475 and H.R. 7200, 75th Cong., 1st sess., pp. 545, 546, 547, 549, 1216, 1217). The committees evidently acquiesced in this view and amendments were accepted (81 Cong. Rec. 7875) and subsequently adopted in the law, exempting employees employed as seamen (sec. 13(a)(3)), certain employees of motor carriers (sec. 13(b)(1)), railroad employees (sec. 13(b)(2)), and employees of carriers by air (sec. 13(a)(4), now sec. 13(b)(3)).

(b) That the exemption was intended to exempt employees employed as ''seamen'' in the ordinary meaning of that word is evidenced by the fact that the chief proponents for the seamen's exemption were the Sailors Union of the Pacific and the National Maritime Union. The former wrote asking for an exemption for ''seamen'' for the reason